

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

MID-CENTURY INSURANCE CO., et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 09-1051-CV-W-ODS
	)	
CLIFFORD D. BAGNELL, et al.,	)	
	)	
Defendants.	)	

ORDER AND OPINION DENYING DEFENDANTS' MOTION TO DISMISS  
(1) FOR LACK OF JURISDICTION OR (2) FOR FAILURE TO STATE A CLAIM

Defendants Connie Ross and Curtis McCurry seek dismissal of this case, contending (1) diversity of citizenship is lacking and (2) Plaintiffs have failed to state a claim for which relief can be granted. The motion (Doc. # 10) is denied.

Defendants' argument regarding jurisdiction is the same one raised by co-Defendant Clifford Bagnell. The Court rejected Bagnell's argument in an Order dated May 4, 2010, and rejects Ross' and McCurry's argument for the same reasons.

Ross and McCurry contend the Complaint fails to state a claim against them because they are not making a claim under any of Bagnell's three insurance policies. However, the Amended Complaint alleges that all three Defendants "have made demand . . . for payment of all UIM insurance coverage for the death of decedent." Amended Complaint, ¶ 15. It also concedes that Ross and McCurry are not parties to the insurance policies, but they nonetheless "are interested parties in that they claim to be beneficiaries under Missouri statute for the alleged wrongful death of decedent." Amended Complaint, ¶ 26. Under Rule 12(b)(6), the Court must accept the truth of the Amended Complaints' allegations and cannot discount them simply because Defendants contend they are untrue. Viewed in that light, the Amended Complaint

states a claim against Ross and McCurry entitling Plaintiffs to a declaration of their rights and responsibilities.<sup>1</sup>

IT IS SO ORDERED.

DATE: May 6, 2010

/s/ Ortrie D. Smith  
ORTRIE D. SMITH, JUDGE  
UNITED STATES DISTRICT COURT

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<sup>1</sup>Of course, if Ross and McCurry have no intentions of seeking recovery from Plaintiffs, it would seem they could confess judgment or readily reach some kind of agreement with Plaintiffs.